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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/410,336	10/01/99	LOVE	S 18612-000410

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TOWNSEND AND TOWNSEND AND CREW  
TWO EMBARCADERO CENTER  
EIGHTH FLOOR  
SAN FRANCISCO CA 94111-3834

EXAMINER

RAWLINGS, S

ART UNIT

PAPER NUMBER

1642

6

DATE MAILED:

12/04/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	<b>Application No.</b> 09/410,336	<b>Applicant(s)</b> LOVE ET AL.	
	<b>Examiner</b> Stephen L. Rawlings, Ph.D.	<b>Art Unit</b> 1642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-32 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- |   |  |
|---|--|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____                  |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                 |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 20) <input checked="" type="checkbox"/> Other: <i>Restriction Election Facsimile sheet</i> . |

### **DETAILED ACTION**

1. Claims 1-32 are pending in the application and are currently under prosecution.

**Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions

### **Elections/Restrictions**

2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:

Group 1. Claims 1-16, drawn to a method of identifying the location of cancer within a breast and determining lymph node involvement in patients with cancer, classified in Class 424, subclasses 9.3, 9.4, 9.5, and 9.6.

Group 2-55. Claims 17-22 and 29, drawn to a method of treating breast cancer comprising administering a coupled compound comprising one targeting agent selected from the group consisting of a protein/polypeptide/peptide, an antibody/antibody fragment, a

ligand, a receptor, a drug/chemical, a lipid, a liposome, a small molecule, and a nucleic acid coupled to one therapeutic agent selected from the group consisting of a cytotoxic agent, a cytolytic agent, a growth inhibiting agent, an antagonist, an agonist, and a liposome containing a drug or agent, classified in Class 424, subclass 9.2.

Note: If Applicant elects any one of Groups 2-55, Applicant is directed to select a coupled compound comprising any one of the targeting agents and any one of the therapeutic agents.

Group 56-109. Claims 23-29, drawn to a method of treating breast cancer comprising administering a targeting molecule itself having therapeutic activity, wherein said targeting molecule comprises one agent selected from the group consisting of a protein/polypeptide/peptide, an antibody/antibody fragment, a ligand, a receptor, a drug/chemical, a lipid, a liposome, a small molecule, and a nucleic acid and wherein said therapeutic activity is selected from the group consisting of a cytotoxicity, a cytolytic activity, growth inhibition, antagonism, an agonism, and immunotoxicity, and a kit comprising classified in Class 424, subclass 9.2.

Note: If Applicant elects any one of Groups 56-109, Applicant is directed to select a targeting molecule comprising any one of the agents and having any one activity.

Group 110. Claims 30-32, drawn to a kit comprising at least one catheter, instructions for use, at least one container holding a reagent, and a package, classified in class 435, subclass 810.

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3. The inventions are distinct, each from the other because of the following reasons:

Inventions 1-109 are materially distinct methods that differ at least in objectives, method steps, reagents, and/or dosages, and/or schedules used, response variables, and criteria for success.

The inventions of Groups 110 and 1-109 are not at all related because the kit of Group I comprising a reagent and at least one catheter is not used in any of the methods of Groups 1-109.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. A telephone call was made to James M. Heslin on November 16, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no

longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (703) 305-3008. The examiner can normally be reached on Monday-Thursday, alternate Fridays, 8:00AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony C. Caputa, Ph.D. can be reached on (703) 308-3995. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

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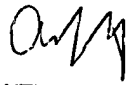
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Stephen L. Rawlings, Ph.D.

Art Unit 1642

slr

November 20, 2000

  
ANTHONY C. CAPUTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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